

SOUTH AFRICA / JUDGMENT

De Freitas and Another vs Chamdor Meat Packers (Pty) Ltd and Others (13551/2018) [2021] ZAGPJHC 506 (26 January 2021)

[2021] ZAGPJHC 506

COURT

South Gauteng High Court, Johannesburg

BEFORE

G Rome

CASE / FILE NUMBER

13551/2018

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IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 13551/2018

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED.

In

the matter between:

DE

FREITAS: JOSE JORGE

First

Applicant

MENEZES: FRANKLIN DOMICIANO DE AGUAR
Second
Applicant
and
CHAMDOR
MEAT PACKERS (PTY) LTD
First
Respondent
BEEFCOR
(PTY) LTD
Second
Respondent
PETRUS
HENDRIK TROSKIE N.O.
Third Respondent
PETRUS
HENDRIK TROSKIE N.O.
Fourth
Respondent
JOHANNES
LODIWIKUS LE ROUX N.O.
Fifth
Respondent
CORNELIUS
JOHANNES HATEM N.O.
Sixth
Respondent
HENDRIK
LAMBERTUS JOHANNES MOULDER
Seventh
Respondent
N.O.
ERENSCHA
ALETTA ERASMUS N.O.
Eighth
Respondent
MALCOLM
JOSEPH FARQUHARSON
Ninth
Respondent
PETRUS
HENDRIK TROSKIE
Tenth
Respondent
CASPARUS
JAN HENDRIK WESSELS
Eleventh
Respondent
JOHAN
ROBINS WATSON
Twelfth

Respondent
HERMANUS
ABRAHAM VAN STADEN
Thirteenth
Respondent
WESSEL
JOHANNES MULLER
Fourteenth
Respondent
TROSKE
& DE WET
CC
Fifteenth
Respondent
RING
DRYER INVESTMENTS (PTY) LTD
Sixteenth
Respondent
GAUTENG
MEAT INSPECTION SERVICES CC
Seventeenth
Respondent

JUDGMENT

ROME, AJ:

INTRODUCTION

1

This application for leave to amend particulars of claim is opposed on one basis only.

2

In this judgment I refer to the plaintiffs (being the applicants in this present interlocutory application) as “the applicants” and the defendants (in the action) as “the respondents”

3

A perusal of the nature of the particulars of claim as summarised in the founding affidavit indicates that: the applicants as minority shareholders in the first defendant, seek various oppression type remedies against it and various of its other stakeholders and directors (hence the number of defendants who are joined) whom the applicants describe as “joint wrongdoers”. The action was instituted in 2018.

4

The applicants served their notice of intention to amend during August

2020. The applicants in their notice sought to amend their particulars of claim in several respects. Only one aspect of the notice of amendment elicited an objection.

5

The objection is that in terms of the amendment the applicants seek to introduce two new causes of action, which only arose post the institution of summons. In other words the respondents contend that two of the

paragraphs of the amendment introduce two new claims that are based on alleged oppressive conduct that first commenced in March 2020, which post-dates the summons; as such, according to the respondents, these new claims cannot legitimately be included within the ambit of the action initiated by the service of the summons.

6 The grounds of the objection are hence narrow.

7 The respondents' objection is based on the statement of Voet that there can be no lawsuit before something is due. Hence the contention is that before issuing summons a plaintiff must therefore have a complete cause of action. This precept however as was explained in *Bankorp Ltd v Anderson Morshead* 1997 (1) SA 251 is subject to at least two further qualifying considerations.

8

The first is that it has long been the law that a new claim is permissible if a valid cause of action already appears from the summons. The second is that even where the summons does not disclose a valid and complete claim, the Court may allow an amendment if the plaintiff did not issue the summons merely to have litigation pending before s/he had a claim.

9

In this matter both of the above requirements are fatal to the respondents' objection. It is common cause that the particulars of claim disclosed a cause of action at the time they were issued. In any event the events alleged in the relevant aspects of the amendment pertain to the very oppression action that has already been instituted but are now perforce the subject of an amendment because they pertain to new facts that occurred post the institution of summons.

10 If the respondents' arguments were to be accepted it would preclude the introduction of amendments that clearly fall within the ambit of the lis between the parties but which pertain to events that occur after the issuing of summons. This would serve no purpose other than to delay and complicate proceedings.

ORDER

11 The following order is made:

- a. The amendments as envisaged in the applicants' notice of amendment dated 4 August 2020 are granted.

- b. The respondents are ordered to pay the opposed costs occasioned by the respondents' notice of objection dated 19 August 2020.

26 January 2021

G ROME

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the applicants: Adv. H.H Cowley

Instructed by:

Martin Hennig Attorneys

For the respondents: Adv. G. Fouché

Instructed by:

Manley Incorporated

Date of hearing:

25 January 2020

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